So also directing the developer to comply with the standardized contracts of sale, taking up a permit for advertisement, to conform to the condition, duties and to audit the accounts which are spelt out in the Act to ensure compliance. Surely the refund of purchase moneys is not within the ambit of ss 11-12.

The innocent purchasers are not without remedy. They can always sue the respondent for the refund of whatever money they have paid for the purchase of houses, including interest.

The proper forum to claim refund of the purchase price would be the courts which, after hearing the case, could decide how much money is to be refunded, how much interest is to be paid in addition and from what date to be so calculated.

Though the Minister's directive is commendable and indeed in the interests of the innocent purchasers, sadly, the refunding of the moneys paid by the purchasers is not provided for in the Act.

The appeal is dismissed.

Order accordingly.

Solicitors: *Mahadevi Ganeshmurugan & Co.*

Reported by *Ng Sheau Jiuan*

Public Bank Bhd v Rasatulin Holdings Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO C2-23-3785-86
SITI NORMA YAAKOB J
12 AUGUST 1988

Banking – Notice of demand on guarantors for repayment of fixed loans – Service of – Mode of service stipulated in guarantees to be by ordinary post – Whether service by AR registered post constituted proper and effective service

Banking – Non-compliance with requirements of s 4 of Bankers' Books (Evidence) Act 1949 – Subsequent filing of affidavit to comply with requirements on day of appeal – All necessary to remedy omission already done – Filing affidavit at eleventh hour not to be taken against plaintiff

Civil Procedure – Filing affidavit to comply with requirements of s 4 of Bankers' Books (Evidence) Act 1949 on day of appeal – All necessary to remedy omission already done – Filing affidavit at eleventh hour not to be taken against plaintiff

The first defendant was sued by the plaintiff for the non-repayment of two fixed loan facilities granted to them. The fourth and fifth defendants were directors of the first defendant and were sued in their capacities as guarantors of the two fixed loans. Under cl 8 of the two guarantees executed by the fourth and fifth defendants, service of the notice of demand may be effected in one of two ways, ie by personal service or by posting the notice through the post at the addresses mentioned in the guarantees. The plaintiff, instead of sending the notices by ordinary post, sent them by AR registered post. In the first, fourth and fifth defendants' appeal against summary judgment entered against them, the fourth and fifth defendants contended that there was no proper and effective service of the demand notices on them. In addition, the defendants also submitted that there was no compliance with s 4 of the Bankers' Books (Evidence) Act 1949 by the plaintiff.

Held, allowing the appeal:

(1) By sending the notices by way of AR registered post, the plaintiff has varied cl 8 of both guarantees. By so choosing, the plaintiff has also burdened themselves with the added responsibility of seeing that the AR cards shall be returned to them duly acknowledged by the fourth and fifth defendants for there to be proper service of such notices on them. In this case, both the AR cards were returned with the endorsements 'kembali tidak boleh dituntut'. There was thus no proper and effective service of such notices on the fourth and fifth defendants.

(2) The plaintiff's solicitors sought to remedy their omission by filing an affidavit to comply with the requirements of s 4 on the day the appeal was heard. Since the appeal was in the nature of a rehearing, the court considered that the plaintiff had done whatever was necessary to remedy their omission and this should not be taken against them, even though such remedy was made at the eleventh hour.

Legislation referred to
Bankers' Books (Evidence) Act 1949 s 4

James Selva for the first, fourth and fifth defendants/appellants.
PG Cheah for the plaintiff/respondent.

Cur Adv Vult

Siti Norma Yaakob J: Only two issues were raised by the first, fourth and fifth defendants in their appeal against an O 14 judgment entered against them on 19 May 1987. The first is the service of the notices of demand on them, dated 1 October 1986.

At the material time, the first defendant was a customer of the plaintiff and they are sued for the non-repayment of two fixed loan facilities granted by the plaintiff pursuant to two loan agreements dated 23 July 1981 and 25 March 1982. The fourth and fifth defendants were directors of the first defendant and they are sued in their capacities as guarantors for the repayment of the two fixed loans pursuant to two guarantees dated 27 February 1982 and 8 March 1982.

From the plaintiff's own documents, it is clear that the notice of demand dated 1 October 1986 although addressed to the first defendant, was acknowledged to have been received by a company called Sri Alam Sdn Bhd, who is in no way connected to these proceedings.

Under cl 8 of the two guarantees executed by the fourth and fifth defendants, service of the notice of de-

mand on them may be effected in one of two ways, ie by personal service or by posting the notice through the post at the addresses mentioned in the guarantees or their last known addresses and such notice shall be deemed to be served on the day following that on which it was posted. Thus if posting is preferred, this can be done by ordinarily posting the notices to the addresses of the fourth and fifth defendants as stated in the guarantees and the notices are deemed to have been served on them a day after they are posted.

In this instant case, rather than sending the notices by ordinary post, the solicitors for the plaintiff chose to send them by way of AR registered post and by doing so, the plaintiff has varied cl 8 of both guarantees. By so choosing, the plaintiff has also burdened themselves with the added responsibility of seeing that the AR cards shall be returned to them duly acknowledged by the fourth and fifth defendants, for there to be proper service of such notices on them. In this case both the AR cards were returned with the endorsements 'kembali tidak boleh dituntut'. As there is no proper and effective service of such notices on the fourth and fifth defendants, this in itself affords a defence to both of them.

The other issue raised is non-compliance of s 4 of the Bankers' Books (Evidence) Act 1949, the effect of which is to render evidence on the entries of the first defendant's accounts kept by the plaintiff inadmissible. The plaintiff's solicitors sought to remedy their omission by filing an affidavit to comply with the requirements of s 4 on the day the appeal was heard. Since the appeal before me was in the nature of a rehearing, I had considered that the plaintiff had done whatever was necessary to remedy their omission, and this should not be taken against them, even though such remedy was made at the eleventh hour. Be that as it may, the fact still remains as to the effectiveness of the notices of demand that had been issued against the first, fourth and fifth defendants and as this is a triable issue, I had allowed their appeal with costs.

Appeal allowed.

Solicitors: *James Jeganathan & Co*; *Chooi & Co.*

Reported by *Ng Sheau Jiuan*

Tunku Abdul Rahman Putra Al-Haj & Ors v Dato Seri Dr Mahathir Mohamad

HIGH COURT (KUALA LUMPUR) – SUIT NO S7-22-79 OF 1988
AJAIB SINGH J
25 MAY 1988

Civil Procedure – Striking out writ of summons and statement of claim – Application for – Statement of claim sought injunction orders against political party from carrying out certain activities – Whether statement of claim discloses reasonable cause of action

Societies – Political party declared unlawful – Registration approved for re-formed party – Formation of another political party – Application for registration refused – Statement of claim sought injunction orders against registered re-formed party from carrying out certain activities – Application to strike out statement of claim – Whether statement of claim discloses reasonable cause of action

UMNO ('the old UMNO') was a component of the governing Barisan Nasional which was declared an unlawful society by the High Court (see [1988] 2 MLJ 129). After the declaration, the plaintiffs proceeded to form a new political party to be named as UMNO Malaysia. However, their application to register the party was rejected by the Registrar of Societies. Meanwhile, the defendants formed another political party called UMNO Baru which was duly registered as a society under the Societies Act.

In their statement of claim, the plaintiffs sought three injunction orders against the defendants: (i) to restrain UMNO Baru from issuing any membership application forms or accepting as members former members of the old UMNO; (ii) to restrain the defendants from making any statement touching on the pro tem committee of the proposed UMNO Malaysia; and (iii) to restrain the defendants from transferring, dealing with or otherwise disposing of any of the assets and liabilities of the old UMNO. The defendants now apply for an order that the writ of summons and statement of claim brought against them by the plaintiffs be struck out on the grounds that it discloses no reasonable cause of action, is scandalous, frivolous and vexatious and is an abuse of the process of the court.

Held, allowing the defendants' application:

(1) UMNO Baru is a duly registered society and it cannot be restrained from pursuing its legitimate activities which must include the recruiting of members. No one therefore can have any reasonable cause of action against UMNO Baru in its membership drive.

(2) Upon the cancellation of the old UMNO on 12 February 1988, all the assets and liabilities become vested in the Official Assignee to be dealt with in accordance with the provisions of the Societies Act. UMNO Baru has no assets or liabilities of the old UMNO in its hands and it is in no position to effect any transfer or to dispose of any assets and liabilities of the defunct UMNO.

(3) The plaintiffs' claim for the injunctions is clearly unsustainable. The court will not allow the prosecution of such frivolous and hopeless litigation which will only result in waste of time and expense and undue harassment to the defendants.

Raja Aziz Addruse (*Muhammad Shafee Abdullah* and *Miss Christina Kow* with him) for the plaintiffs.

Zaki Tun Azmi (*Miss Juliana Solomon* with him) for the defendants.

Cur Adv Vult